

(2011) 12 RAJ CK 0061

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 4171 of 2011

Suo Moto

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 12-12-2011

Acts Referred:

Angul Laws Regulation, 1936 — Section 3
Constitution of India, 1950 — Article 129, 19
Contempt of Courts Act, 1971 — Section 16(1), 2
Criminal Procedure Code, 1973 (CrPC) — Section 154, 156(3), 197, 482, 483
Judicial Officers Protection Act, 1850 — Section 1
Khondmals Laws Regulation, 1936 — Section 3
Laws Local Extent Act, 1874 — Section 3
Panth Piploda Laws Regulation, 1929 — Section 2
Penal Code, 1860 (IPC) — Section 167, 500, 504, 506, 77
Registration Act, 1908 — Section 5(1), 6, 86
Santhal Parganas Settlement Regulations, 1872 — Section 3
Scheduled Districts Act, 1874 — Section 3
Stamp Act, 1899 — Section 2(9)

Citation : (2011) 12 RAJ CK 0061

Hon'ble Judges : Mahesh Chandra Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mahesh Chandra Sharma

1. All the aforementioned Lawyers have drawn attention of this Court towards the News Item published in the Rajasthan patrika dated 12.12.2011 at Page No. 5 which is reproduced as under:

2. In view of the above news item all the learned Advocates have requested to this Court that without the prior approval of Hon"ble the Chief Justice, a criminal case could not be registered against an Hon"ble Judge of the High Court or Hon"ble Supreme Court as held by Hon"ble Supreme Court in the case of "Veeraswami". And, as such, the order passed by the learned Metropolitan

Magistrate, Jaipur Metropolitan be quashed and set aside. The learned Advocates have also requested that in such cases suo moto cognizance should be taken to make such orders as may be necessary to give effect to any order under this Code of Criminal Procedure or to prevent abuse of process of any Court or otherwise to secure ends of justice and the learned Magistrate concerned should be called personally along with the relevant record so that proper order could be passed.

3. I have heard learned Advocates and gone through the aforesaid News Item.

4. The Deputy Registrar, Judicial is directed to ask the concerned Magistrate to appear before this Court at 2.00 p.m. today along with the relevant record and the learned Public Prosecutor be also directed to call the case diary along with the Station House Officer of the Police Station, Ashok Nagar, Jaipur City, South so that proper order could be passed.

5. At 2.00 p.m. Ms. Ambika Soni, Munsif Magistrate, No.13, Jaipur Metropolitan City has appeared and has stated that the Presiding Officer Ms. Ravi Bala Singh, learned Metropolitan Magistrate, Jaipur City, in this case is on leave and at her Place she is looking after her work.

6. She has stated that Srajna Shresth, Advocate and Babu Lal have filed a complaint before Metropolitan Magistrate No.11, Jaipur Metropolitan, Jaipur and same has been sent to the Police Station, Ashok Nagar, Jaipur Metropolitan u/s 156 (3) for registering the case.

7. In this complaint, names have not been disclosed and only status of the then Principal Secretary, Law, State of Rajasthan has been mentioned. The Ashok Nagar, Police Station registered the case and on the basis of that, the aforesaid news item has been published showing the names of three Hon''ble Judges of this High Court namely; Hon''ble Mr. Justice Guman Singh (Retd.), Hon''ble Mr. Justice Mahesh Bhagwati, Hon''ble Mr. Justice SS Kothari and their names have been telecast in the television as well.

8. Before proceeding further in the matter it would be necessary to have a look at the Judicial Officers Protection Act, 1850 and the Judges Protection Act, 1985.

9. Judicial officers Protection Act, 1850 reads as under :

An Act for the protection of Judicial Officers For the greater protection of Magistrates and others acting judicially; It is enacted as follows:-

1 Short title given by the Indian Short Titles Act, 1897 (14 of 1897). The Act has been declared to be in force in all the Provinces of India, except the Scheduled Districts, by the Laws Local Extent Act, 1874 (15 of 1874), Section 3.

It has been declared in force in the Santhal Parganas by the Santhal Parganas Settlement Regulation (3 of 1872), Section 3; in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936) Section 3 and Schedule; in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), Section 3 and

Schedule; and in Panth Piploda, by the Panth Piploda Laws Regulation, 1929 (1 of 1929), Section 2.

It has also been declared by notification u/s 3(a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the following Scheduled Districts, namely:-

The Taluqs of Bhadrachalam, Rakapilli and the Rampa Country See Gazette of India, 1879, Pt. I, p. 630

1. Non-liability to suit of officers acting judicially, for official acts done in good faith, and of officers Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction:

Provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of; and no officer of any Court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court, for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same¹.

1 As to procedure for institution criminal prosecutions against Judges and public servants, see the Code of Criminal Procedure, 1898 (Act 5 of 1898), Section 197.

10. Judges (Protection) Act, 1985 reads as under :

Preamble

An Act for securing additional protection for Judges and others acting Judicially and

for matters connected therewith

Be it enacted by Parliament in the Thirtysixth Year of the Republic of India as follows:-

1. Short title and extent.-(1) This Act may be called the Judges (Protection) Act, 1985.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

2. Definition.-In this Act, "Judge" means not only every person who is officially designated as a Judge, but also every person -

(a) who is empowered by law to give in any legal proceeding a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive; or

(b) who is one of a body of persons which body of person is empowered by law

to give such a judgment as is referred to in clause

(a).

3. Additional protection to Judges.-(1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-section

(2), no court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.

(2) Nothing in sub-section (1) shall debar or affect in any manner the power of the Central Government or the State Government or the Supreme Court of India or any High Court or any other authority under any law for the time being in force to take such action (whether by way of civil, criminal, or departmental proceedings or otherwise) against any person who is or was a Judge.

4. Saving.-The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force providing for protection of Judges.

11. Section 77 of the Indian Penal Code also provides a protection for the acts done by a Judge, which reads as under :

77. Act of Judge when acting judicially.- Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

12. From the above it is clear that right from the year 1850 or after enactment of Judicial Protection Act, 1985 in respect of Hon"ble Judges " no court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.

13. It is also necessary to have a look at the important Judgments of the Apex Court.

14. In State of Rajasthan Vs. Prakash Chand and Others, , the Apex Court in paras 34 and 25 held as under :

34. Even otherwise, it is a fundamental principle of our jurisprudence and it is in public interest also that no action can lie against a Judge of a Court of Record for a judicial act done by the Judge. The remedy of the aggrieved party against such an order is to approach the higher forum through appropriate proceedings. This immunity is essential to enable the Judges of the Court of Record to discharge their duties without fear or favour, though remaining within the bounds of their jurisdiction. Immunity from any civil or criminal action or a charge of contempt of court is essential for maintaining independence of the judiciary and for the

strength of the administration of justice. The following passage from Oswalds's Contempt of Court, 3rd Edn., 1993 (Reprint), in this behalf is apposite:

An action will not lie against a Judge of a Court of Record for a wrongful commitment in the exercise of his judicial duties, any more than for an erroneous judgment(s). But the Divisional Court refused to strike out as disclosing no cause of action a statement of claim in an action for malicious prosecution brought against certain Judges of the Supreme Court of Trinidad for having (as it was alleged) of their own motion, and without any evidence, caused the plaintiff to be prosecuted and committed to prison for an alleged contempt of the Supreme Court in forwarding to the Governor of the Colony for transmission to the Queen-in-Council a petition of appeal complaining of the oppressive conduct of the defendants as Judges(t). At the trial of this case before Lord Coleridge, C.J., the jury found as regards one of the defendants that "he had overstrained" his judicial powers, and had acted in the administration of justice oppressively and maliciously to the "prejudice of the plaintiff" and to the perversion of "justice". The jury assessed the damages at Pounds 500. Notwithstanding the verdict, Lord Coleridge ordered judgment to be entered for the defendant. This judgment was affirmed by the Court of Appeal. Lord Esher, MR, in delivering the judgment of the Court, said, "If any Judge exercises his jurisdiction from malicious motives, he has been guilty of a gross dereliction of duty". And after saying that a Judge was liable to be removed from his office for such conduct, Lord Esher went on to say that the common law clearly was that no action lay against a Judge of a Court of Record "for doing something within his jurisdiction but" doing it maliciously and contrary to good faith.

(Emphasis ours)

Thus no action could lie against the Chief Justice acting judicially for doing something within his jurisdiction even if the order is patently erroneous and unsustainable on merits. Commenting upon the extent of immunity which the Judges of the superior courts must have for preserving independence of the judiciary, the authors of Salmond and Heuston on the Law of Torts, 21st Edn., 1996 in Chapter XIX observe:

A Judge of one of the superior courts is absolutely exempt from all civil liability for acts done by him in the execution of his judicial functions. His exemption from civil liability is absolute, extending not merely to errors of law and fact, but to the malicious, corrupt or oppressive exercise of his judicial powers. For it is better that occasional injustice should be done and remain unredressed under the cover of this immunity than that the independence of the judicature and the strength of the administration of justice should be weakened by the liability of judges to unfounded and vexatious charges of errors, malice, or incompetence brought against them by disappointed litigants - "otherwise no man but a beggar, or a fool, would be a judge".

(See Arenson v. Casson, Beckman Rutley & Co. 11 AC at p. 440, per Lord Fraser)

(Emphasis supplied)

35. Even under the Judges (Protection) Act, 1985 immunity has been given to judicial officers in relation to judicial work done by them as well as for the judicial orders made by them. The Statement of Objects and Reasons for introducing the Bill in relation to the 1985 Act which reads thus is instructive:

Judiciary is one of the main pillars of parliamentary democracy as envisaged by the Constitution. It is essential to provide for all immunities necessary to enable Judges to act fearlessly and impartially in the discharge of their judicial duties. It will be difficult for the Judges to function if their actions in court are made subject to legal proceedings, either civil or criminal.

Section 16 (1) of the Contempt of Courts Act, 1971 does not apply to the Judges of the Court of Record but only to the subordinate judiciary.

15. In *In Re: Ajay Kumar Pandey*, the Apex Court held as under :

22. The notice issued to as also the complaint subsequently filed against the two Hon"ble Judges of this Court were placed before Hon"ble the Chief Justice of India who directed the same to be placed before the Court. That is how these matters have come before us.

23. The aforesaid notice dated 10-8-1996 issued by the contemner to the two Hon"ble Judges calling upon them to tender unconditional written apology to him and also to pay compensation, was placed with the office report dated 12-9-1996 before the Court when the following order was passed on 16-9-1996:

Mr Ajay Kumar Pandey, Advocate, C-2230, Indira Nagar, Lucknow-226016 has sent registered letters dated August 10, 1996 to two Hon"ble Judges of this Court. The language and the tenor of the letter prima facie amounts to scandalising and lowering the authority of this Court. We issue contempt notice to Mr Pandey, returnable on 30th September, 1996. He may show cause why he be not held guilty of the contempt of court and punished suitably. Registry to serve the respondent through the Additional Registrar of the Lucknow Bench of the Allahabad High Court. Mr Pandey shall be personally present in Court on 30th September, 1996 at 10.30 a.m.

24. When the matter was taken up on 30-9-1996, the following order was passed:

Mr Ajay Kumar Pandey, Advocate, the contemnor is present before us. Initially, he had refused to accept summons of this Court but later on he himself contacted the Registry of this Court on September 27, 1996 and obtained the summons. Apart from derogatory and scandalous language written in the letter addressed to two Hon"ble Judges of this Court he also threatened them that he would file criminal complaints against them. He has, as a matter of fact, filed Complaint Case No. 122/1/96 on September 23, 1996. The contents of the complaint, in totality, relate to the proceedings conducted in Court No. 9 of this Court. The complaint is full of scandalous and abusive language. We issue notice

to Mr Ajay K. Pandey why he should not be held guilty of contempt of court and be punished suitably for filing this scandalous complaint before Mr Nepal Singh, Additional Chief Metropolitan Magistrate. We take suo motu notice of the complaint filed before the ACMM. The complaint is wholly frivolous and amounts to the abuse of the process of the Court. We quash the complaint. We are told that the ACMM has further marked that

complaint to Ms Renu Bhatnagar, Metropolitan Magistrate who has fixed the date some time in March 1997. We quash the complaint and the proceedings before Ms Renu Bhatnagar, MM. Mr Ajay K. Pandey, standing before us, has fairly stated that he has no objection to the quashing of the complaint. We are further of the view that ACMM and MM who have dealt with this complaint have acted without any application of mind. It seems that they have not even read the contents of the complaint. We issue notice to both of them to show cause why contempt proceedings be not initiated against them.

Mr Pandey may file his reply within one week from today in this Court in both the contempt petitions. He may file all the documents, affidavits of himself or of any other person he wishes to file in support of his defence along with the reply. The contempt petitions shall be heard on 10-10-1996 at 10.30 a.m. On our suggestion, Mr Pandey states that he would not mind having the assistance of a counsel. Mr Mukul Mudgal, learned counsel present in Court states that he would request Ms Manju Goel, Secretary, Supreme Court Legal Services Committee to assign a counsel to assist this Court on behalf of the contemner. We request Mr G.L. Sanghi, learned Senior Counsel to assist this Court. A set of papers be sent to Mr G.L. Sanghi, learned counsel.

The matter regarding contempt notice to Additional Chief Metropolitan Magistrate and Metropolitan Magistrates be listed on 30-10-1996. They shall be personally present in Court.

25. Separate notices for contempt were issued to the two Magistrates, who are being dealt with separately.

26. When the matter was taken up on 10-10- 1996, the contemner filed unqualified and unconditional apology to the following effect:

I, Ajay Kumar Pandey, Advocate, the respondent-contemner herein do hereby tender my unqualified and unconditional apology to this Hon''ble Court for addressing registered letters dated 10-8- 1996 to two Hon''ble Judges of this Hon''ble Court, for the language and contents of the said letters, for filing a criminal complaint dated 23-9-1996 in the Court of Additional Chief Metropolitan Magistrate, New Delhi, against two Hon''ble Judges of this Hon''ble Court and for the language and contents of the said complaint. I respectfully submit that these actions of mine and the language used by me in relation to the Judges of this Hon''ble Court were as a result of my losing control over myself for which I am genuinely repentant. I humbly seek forgiveness from this Hon''ble Court and pray to this Hon''ble Court to accept my apology and show mercy on me. I undertake

not to repeat such conduct in the future.

27. The Court, however, passed the following order on that date:

We have heard Mr Raju Ramachandran. On our request he is appearing for the contemnor, A.K. Pandey. We have also heard Mr G.L. Sanghi, who on our request is appearing to assist the Court. We have also heard Mr A.K. Pandey. Initially Mr Pandey stated that he could not file reply because the Registry declined to permit him to inspect all the records. We placed the records before him and permitted him to examine the same. Mr Pandey, who is present in Court states that he does not want to inspect the records. Mr Pandey has filed unqualified and unconditional apology. This may be taken on record.

We adjourn the hearing of this case to October 30, 1996. Meanwhile, Mr Pandey may file his reply to the contempt petition, if he so wishes. The application and the apology which are already on the record shall be taken into consideration on the next date of hearing. The contemner to be present in Court on October 30, 1996.

28. On 30-10-1996 when the case was next taken up, the Court passed the following order:

Mr Arun Jaitley, Senior Advocate, represents Mr Nepal Singh, Additional Chief Metropolitan Magistrate and Ms Renu Bhatnagar, Metropolitan Magistrate is represented by Mr Rajiv Garg, Advocate. Both the contemnors are present in Court. To enable them to file affidavits in reply to the contempt notice, we adjourn the hearing to 4th November, 1996. Meanwhile, we direct Registrar of Delhi High Court to send the personal files of these two officers to this Court. We are told that Justice J.K. Mehra and Justice S.N. Kapoor are the inspecting Judges so far as these two judicial officers are concerned. We would request Hon"ble Judges to give their comments regarding these two officers. The earlier orders of this Court in this case may also be sent to the Registry of the Delhi High Court.

To come up on 4th November, 1996. Orders to be pronounced on 4th November, 1996 in respect of Mr Ajay Kumar Pandey.

29. The background facts set out above would indicate that the contemner is a practising advocate who himself had filed criminal complaint against a brother advocate (Mr Mahesh Giri) and Ms Saroj Bala who was a member of the lower judiciary posted as VII Additional District Judge at Lucknow, after giving them a notice demanding compensation for having defamed him by publicly saying that he had sexual relations with one of them, namely, Ms Saroj Bala. This complaint was dismissed at the initial stage as indicated in the earlier part of this judgment, but he raised a number of controversies, including a demand for enquiry to be set up by the then District Judge, Lucknow, Mr J.C. Mishra, who is now a sitting Judge of the Allahabad High Court. The contemner filed a revision before the High Court against the order by which his complaint was dismissed and the application for summoning the witnesses through court process was

rejected. This revision, as pointed out earlier, was dismissed by Mr Justice Virendra Saran. In the SLP filed against that judgment, the contemner has criticised Justice Virendra Saran in intemperate language and termed his judgment as forged and fictitious, besides imputing bad motive.

30. When this Court noticed the scandalous and even abusive language by the contemner used against Mr Virendra Saran and other officers of the judiciary, it required the contemner to delete those sentences or portions and/or file a fresh petition. Not satisfied, the contemner moved an application for recall of the order and in that application he again used intemperate language and thereafter started making efforts to avoid the Court (Hon''ble Anand and Mukherjee, JJ.) and for this purpose, he adopted derogatory and bad tactics. He gave notice to the two Hon''ble Judges seeking unconditional apology from them for their conduct and behaviour in the Court and also demanded compensation from them. He wrote to the President of India for sanction to prosecute the Hon''ble Judges for offences under Sections 167, 500, 504 and 506 IPC giving two months'' time to the President to grant sanction or else he would treat the sanction to have been granted to him. He also threatened to go on hunger strike before the Supreme Court with effect from 25-9-1996. He then filed a complaint against the Hon''ble Judges branding their conduct as "goondaism". He pleaded for his case to be listed before some other Bench or to be referred to the Constitution Bench on the ground that both the Hon''ble Judges were personally involved in the case and, therefore, they need not hear the matter, but he was unsuccessful.

31. This Court, as the highest court of the land, has not only the right to protect itself from being denigrated, but has also the right, jurisdiction and authority to protect the High Courts and the subordinate courts from being insulted, abused or in any other way denigrated. All the courts, be they the lower or the highest, function for the noble cause of dispensing justice. Since they have to decide litigation between two contesting parties, it is obvious that they have to have full freedom and independence in settling the litigation. The Presiding Officers who run the courts and conduct the proceedings therein have to act fearlessly. Any action on the part of any person or litigant or lawyer, which tends to interfere or obstruct the process of justice, has to be deprecated so that the proceedings may be held in an orderly fashion and everyone who participates in those proceedings may have the feeling of liberty to address the court for proper adjudication of his case.

32. An advocate, as a citizen of this country, has the fundamental right of freedom of expression and speech under Article 19 of the Constitution. This right is also guaranteed to him under the Advocates Act. Apart from that, the legal profession has the inherent right to express itself in the best manner possible in uninhibited language, but the right to express also carries with it the duty to be dignified in the use of expression and to maintain decorum and peace in the court proceedings.

33. In Dr. D.C. Saxena, Contemnor Vs. Hon''ble the Chief Justice of India, this Court observed, inter alia, as under: (SCC pp. 244-45, para 35)

Advocacy touches and asserts the primary value of freedom of expression. It is a practical manifestation of the principle of freedom of speech.... Freedom of expression in arguments encourages the development of judicial dignity, forensic skills of advocacy and enables protection of fraternity, equality and justice. It plays its part in helping to secure the protection of other fundamental human rights.... Freedom of expression, therefore, is one of the basic conditions for the progress of advocacy and for the development of every man including legal fraternity practising the profession of law. Freedom of expression, therefore, is vital to the maintenance of free society. It is essential to the rule of law and liberty of the citizens. The advocate or the party appearing in person, therefore, is given liberty of expression. [But] they equally owe countervailing duty to maintain dignity, decorum and order in the court proceedings or judicial process. The liberty of free expression is not to be confounded or confused with licence to make unfounded allegations against any institution, much less the judiciary.

34. It was further observed in that above case as under: (SCC p. 247, para 40)

Scandalising the court, therefore, would mean hostile criticism of judges as judges or judiciary. Any personal attack upon a judge in connection with the office he holds is dealt with under law of libel or slander. Yet defamatory publication concerning the judge as a judge brings the court or judges into contempt, a serious impediment to justice and an inroad on the majesty of justice. Any caricature of a judge calculated to lower the dignity of the court would destroy, undermine or tend to undermine public confidence in the administration of justice or the majesty of justice. It would, therefore, be scandalising the judge as a judge, in other words, imputing partiality, corruption, bias, improper motives to a judge is scandalisation of the court and would be contempt of the court. Even imputation of lack of impartiality or fairness to a judge in the discharge of his official duties amounts to contempt. The gravamen of the offence is that of lowering his dignity or authority or an affront to the majesty of justice. When the contemner challenges the authority of the court, he interferes with the performance of duties of judge's office or judicial process or administration of justice or generation or production of tendency bringing the judge or judiciary into contempt.

35. In the present case, we are concerned with the notice issued by the contemner to the two Hon''ble Judges demanding apology and compensation, and the subsequent complaint filed by him in the Court of ACMM, Delhi, and the contents thereof. The notice relates to the proceedings of the Court on 15-12-1995. It is said that both the Judges, "without any authority, basis, immorally and illegally hurled upon "me" with highly derogatory, insulting, offending and contemptuous remarks".

36. After setting out what the Judges allegedly said, it is mentioned in the notice

as under: "It is most important to mention here that I had never prayed to grant six weeks" time for removing anything from the petitions, filing the fresh petitions and you dictated absolutely false in your order in this regard only with the sole motive to waste the money and valuable time of the petitioner and anyhow harass me along with hide the corruption, fraud, cheating and forgery etc. in a short word, "sins".

37. The notice also mentions his application to the President of India for sanction and in it he held out a threat to the two Hon'ble Judges that if they did not tender unconditional written apology to him he would initiate criminal proceedings in the competent criminal court.

38. The criminal contempt is defined in Section 2(c) of the Contempt of Courts Act, 1971 as under:

2. (c) "criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever....

According to the definition reproduced above, the first precondition is the publication or doing of any other act and the second is that the publication or doing of the act has resulted in the consequences set out in Section 2 (c)(i), (ii) and (iii), namely:

(i) scandalizes or tends to scandalize, or lowers or tends to lower the authority of any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

39. In view of the definition, the contemptuous conduct may be either due to the publication or consists in the doing of any other act.

40. In Delhi Judicial Service Assn. v. State of Gujarat, it was observed by this Court that: (SCC pp. 456-57, para 42)

... The definition of criminal contempt is wide enough to include any act by a person which would tend to interfere with the administration of justice or which would lower the authority of court. The public have a vital stake in effective and orderly administration of justice. The Court has the duty of protecting the interest of the community in the due administration of justice and, so, it is entrusted with the power to commit for contempt of court, not to protect the dignity of the Court against insult or injury, but, to protect and vindicate the right of the public so that the administration of justice is not perverted, prejudiced, obstructed or interfered with.

41. In Dr D.C. Saxena case¹, this Court has already laid down that if a Judge, on

account of the proceedings conducted by him in his court, is threatened that he would be prosecuted in a court of law for the judicial act done by him, it amounts to criminal contempt as it lowers and tends to lower the dignity of the court.

42. We are also of the same opinion. We may observe that any threat of filing a complaint against the Judge in respect of the judicial proceedings conducted by him in his own court is a positive attempt to interfere with the due course of administration of justice. In order that the Judges may fearlessly and independently act in the discharge of their judicial functions, it is necessary that they should have full liberty to act within the sphere of their activity. If, however, litigants and their counsel start threatening the Judge or launch prosecution against him for what he has honestly and bona fide done in his court, the judicial independence would vanish eroding the very edifice on which the institution of justice stands. It would also be in violation of the statutory protection available to the Judges and Magistrates under the Judicial Officers (Protection) Act as also the Judges (Protection) Act.

43. Having seen the entire record, we are fully satisfied that the contemner, by questioning the conduct of the Judges through his notice and demanding apology and compensation from them as also the complaint lodged against them, especially in the language employed by him, is guilty of the "criminal contempt" and is liable to be punished therefor in both the cases.

44. In relation to the quantum of punishment, we may observe that the contemner, who is a practising advocate and is young in age, had on 10-10-1996, tendered before us an unconditional and unqualified apology in writing, withdrawing all the objectionable remarks, sentences and words used by him in the application, notice and complaint and had expressed his regrets. The Court, however, is not bound to accept the apology unless there is real feeling of repentance in the contemner. The contemner had already been given an opportunity at the initial stage by both the learned Judges to withdraw his remarks against a Judge of the Allahabad High Court and other officers of the lower judiciary, but he insisted to proceed with the case. He even initiated contempt proceedings against both the Hon"ble Judges. But this Court took a lenient view and instead of initiating any other action against him, dismissed the criminal contempt petition by order dated 5-8-1996, passed by Hon"ble J.S. Verma and Hon"ble B.N. Kirpal, JJ.

45. The jurisdiction of this Court under Article 129 of the Constitution is independent of the Contempt of Courts Act and the power under Article 129 cannot be denuded, restricted or limited by the Contempt of Courts Act, 1971. Thus there is no restriction or limitation on the nature of punishment that this Court may award while exercising its contempt jurisdiction. But we do not intend to travel far and beyond.

46. Having convicted the contemner for obstructing the course of justice by trying to threaten and overawe the Court by using insulting and disrespectful

language and issuing notices and also launching criminal prosecution against two Hon'ble Judges, we sentence the contemner for the offence of criminal contempt as under:

(a) The contemner Ajay Kumar Pandey is hereby sentenced to undergo imprisonment for a period of six months. On serving this sentence for two weeks, the remaining sentence shall stand suspended for a period of two years and may be activated in case the contemner is convicted for any other offence of contempt of court within the said period. He shall be taken into custody forthwith but will be released after two weeks, to be taken into custody again if and when his remaining sentence stands activated.

47. The contempt petitions are disposed of accordingly.

16. In S.P. Goel Vs. Collector of Stamps, Delhi, the Apex Court relying on Judicial Officers Protection Act 1850 held as under :

31. The observations of this Court extracted above on which strong reliance has been placed by the learned counsel for the appellant are undoubtedly true and we also reiterate that a government officer may be held liable in tort if, in the discharge of his official administrative duties, he acts maliciously or with oblique motive or mala fide but the position in the instant case is different in many vital respects.

32. We have already indicated above that under the Registration Act as also under the Stamp Act, the officers, apart from performing administrative duties, also, at times, perform quasi-judicial functions. The courts are also involved at some stage in the matter of determination of stamp duty. The courts and the officers are thus components of one and the same set-up under these Acts. The Presiding Officers of the courts are protected under the Judicial Officers (Protection) Act, 1850, read with the Judges (Protection) Act, 1985. But so far as the officers are concerned, the position is a little different.

33. We are, however, in the instant case, concerned with the question of protection of "Collector" and, therefore, we are not considering the question of protection of "other officers".

34. Section 1 of the Judicial Officers (Protection) Act, 1850 provides, inter alia, as under:

1. No Judge, Magistrate, Justice of the Peace, Collector, or other person acting judicially shall be liable to be sued in any civil court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction: Provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of. * * *

35. This section contains the common law rule of immunity of Judges which is based on the principle that a person holding a judicial office should be in a position to discharge his functions with complete independence and, what is

more important, without there being in his mind fear of consequences. The scope and purpose of this Act has already been explained by this Court in Anwar Hussain v. Ajoy Kumar Mukherjee in which the old decision in Teyen v. Ram Lal was approved. The position of Judges, Judicial Officers and Magistrates has since been made more secure by the enactment of Judges (Protection) Act, 1985.

36. In the instant case, the Collector alone has been arrayed as respondent and the claim under the Consumer Protection Act was filed only against him. "Collector" has been defined in Section 2(9) of the Stamp Act as under:

2. (9) Collector-

(a) means, within the limits of the towns of Calcutta, Madras and Bombay, the Collector of Calcutta, Madras and Bombay, respectively and, without those limits, the Collector of a district, and

(b) includes a Deputy Commissioner and any officer whom the State Government may, by notification in the Official Gazette, appoint in this behalf.

Since "Collector" has been specifically mentioned along with Judges, Magistrates and Justices of Peace in the Judicial Officers (Protection) Act, 1850, it is obvious that immunity from legal action contemplated by this Act will also be available to him.

37. Apart from the above, Section 86 of the Registration Act provides as under:

86. Registering Officer not liable for thing bona fide done or refused in his official capacity.- No Registering Officer shall be liable to any suit, claim or demand by reason of anything in good faith done or refused in his official capacity.

38. This section provides complete protection to the Registering Officer for things done "bona fide" by him under the Act. It is obvious that action which is not bona fide or which is malicious will not be protected.

39. These provisions were not noticed by this Court in Lucknow Development Authority case¹ obviously because this aspect of the matter was not involved therein. In the instant case, neither the appellant pleaded nor has the District or the State Forum recorded any finding that the refusal of the Registering Officer or the inaction of the Collector of Stamps was malicious, motivated or mala fide. We need not, therefore, further delve into the matter.

40. The appeal consequently fails and is dismissed.

17. The lawyers have cited a judgment of Hon^{ble} Supreme Court in the case of U.P. Judicial Officers Association v. Union of India, (1994) 4 SCC 687 wherein it was observed as under:

We have heard Shri RK Jain, learned Senior Counsel for the petitioner and Shri Yogeshwar Prasad, learned Senior Counsel for the State of Uttar Pradesh. This writ petition raises certain serious and important issues as to the meaning by which it should be ensured and protected. Incidental to the requirement of

maintaining such independence of the judiciary, it is of importance that members of the judicial services should not work under apprehensions of retaliatory action by the Police and the Executive whatever form such action might assume.

2- We make an interim order that no crime or criminal case shall be registered against a judicial officer in respect of anything allegedly done or purported to be done in the discharge of his duty or in his capacity as holder of such judicial office without the prior permission of the Chief Justice of the High Court concerned. In making this interim order, we take into account the observations of this Court in *K. Veeraswami V. Union of India*, where, in the context of Judges of the superior courts, it was observed-

59. There is, however, apprehension that the executive being the largest litigant is likely to misuse the power to prosecute the Judges. That apprehension in our over-litigious society seems to be not unjustified or unfounded. The Act no doubt provides certain safeguards. Section 6 providing for prior sanction from the competent authority and directing that no court shall take cognizance of the offence u/s 5 (1) without such prior sanction is indeed a protection for Judges from frivolous and malicious prosecution. It is settled law that the authority entitled to grant sanction must apply its mind to the facts of the case and all the evidence collected before forming an opinion whether to grant sanction or not. Secondly, the trial is by the court which is independent of the executive. But these safeguards may not be adequate. Any complaint against a Judge and its investigation by the CBI, if given publicity will have a far-reaching impact on the Judge and the litigant public. The need therefore, is a judicious use of taking action under the Act. Care should be taken that honest and fearless judges are not harassed. They should be protected.

60. We, therefore, direct that no criminal case shall be registered u/s 154 Cr. P.C. against a Judge of the High Court, Chief Justice of High Court or Judge of the Supreme Court unless the Chief Justice of India is consulted in the matter. Due regard must be given by the Government to the opinion expressed by the Chief Justice. If the Chief Justice is of opinion that it is not a fit case of proceeding under the Act, the case shall not be registered.

3. In *Delhi Judicial Service Association Vs. State of Gujarat*, this Court issued the following guidelines (SCC pp 411-12)

(A) A judicial officer should be arrested for any offence under intimation to District Judge or the High Court as the case may be;

(B) In case of necessity for immediate arrest of a judicial officer only a technical or formal arrest may be effected;

(C) The fact of such arrest should be immediately communicated to the District and Sessions Judge of the concerned District and the Chief Justice of the High Court.

(D) The judicial officer so arrested shall not be taken to a police station, without

the prior order or directions of the District and Sessions Judge of the concerned district, if available.

(E) Immediate facilities shall be provided to the Judicial Officer for communication with his family members, legal advisers and judicial officers, including the District and Sessions Judge.

(F) No statement of judicial officer who is under arrest be recorded nor any panchanama be drawn up nor any medical tests be conducted except in the presence of the Legal Adviser of the Judicial Officer concerned or another Judicial Officer of equal or higher rank, if available.

(G) Ordinarily there should be no handcuffing of a judicial officer.

The above guidelines are not exhaustive but these are minimum safeguards which must be observed in case of arrest of a judicial officer. These guidelines should be implemented by the State Government as well as by the High Courts.

The aforesaid guidelines were in regard to all offences generally; but when any criminal conduct is attributed to a Judicial Officer in discharge of his duties or in purported exercise or discharge of his duties, we direct that, in addition, no crime for investigation should be registered pursuant to any FIR without the permission of the Chief Justice of the High Court concerned.

18. Learned Advocates have drawn attention of this Court towards sections 482 and 483 Cr. P.C. which runs as under:

482- Saving of inherent power of High Court.-

Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

483- Duty of High Court to exercise continuous superintendence over courts of Judicial Magistrates.- Every High Court shall so exercise its superintendence over the courts of Judicial Magistrates subordinate to it as to ensure that there is an expeditious and proper disposal of cases by such Magistrates.

19. Mr. Asmohammad S.H.O. Ashok Nagar, Police Station, Jaipur City, South, who is present in person has stated that the FIR No. 388/11 has been transferred from Ashok Nagar, Police Station to CID (CB), Jaipur for investigation. He has also stated that the complaint does not disclose the names of Hon"ble Judges and only the post of Principal Secreary, Law has been mentioned.

20. I have also gone through the complaint No. 273 of 2011 filed before the Metropolitan Magistrate No.11 Jaipur Metropolitan, Jaipur by Sarjana Shresth, Advocate and Babu Lal, Journalist. The complaint does not disclose a single word about involvement of Hon"ble Judges of this Court and Retd. Hon"ble Judge of this court. It appears that the Metroplitan Magistrate without looking into the

complaint has sent the complaint u/s 156 (3) Cr.P.C. to the concerned police station. The FIR and the criminal proceedings taken qua the working Hon''ble Judges of this Court and Retd. Hon''ble Judge of this Court deserves to be stayed.

Looking to the facts and circumstances of the case mentioned hereinabove, I hereby pass the following interim order:

1. The FIR No. 388/11 registered at P.S. Ashok Nagar, Jaipur City, South is stayed qua to the Hon''ble Justice Mr. Guman Singh (Retd.); Hon''ble Mr. Justice Mahesh Bhagwati and Hon''ble Mr. Justice SS Kothari.

2. The Deputy Registrar (Judicial) of this Court is directed to register this matter as SB Criminal Misc. Petition under sections 482 and 483 Cr. P.C.

3. Issue notices to the Chief Secretary, State of Rajasthan, Principal Home Secretary, State of Rajasthan, Director General of Police, State of Rajasthan and the complainants along with this order.

4. The News Paper dated 12.12.2011 which has published the aforesaid news may be placed on the record of this misc. petition.

5. The record which has been brought by the Metropolitan Magistrate Ms. Ambika Soni be also kept along with this file.

6. The Deputy Registrar

(Judicial) of this Court is also directed to list the matter as per rules.

7. The Deputy Registrar (Judicial) is also directed to supply copies of this judgment to all the District and Sessions Judges in Rajasthan, Bar Council of Rajasthan, Bar Associations of Jaipur and Jodhpur and all District Bar Associations in Rajasthan and all the advocates, who appeared and assisted this court

21. List the case after four weeks.